



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 28, 2007

Christopher Barnard, Senior Vice President
Clariant Corporation
4000 Monroe Road
Charlotte NC 28205

Re: Docket No. TSCA-01-2007-0058

Dear Mr. Barnard:

I enclose a copy of the Consent Agreement and Final Order signed today by the Regional Judicial Officer. Payment of the penalty is due within 30 days, in accordance with the instructions in paragraphs II.D and E of the Consent Agreement.

I also enclose a copy of EPA's "Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings."

I appreciate Clariant's cooperation in resolving this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas T. Olivier", is written over the typed name.

Thomas T. Olivier, Senior Enforcement Counsel
Office of Environmental Stewardship
EPA Region I

cc: Erin Russell, Assistant General Counsel

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 28, 2007

Wanda Rivera, Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region I
Suite 1100, Mail Code RCH
One Congress Street
Boston, Massachusetts 02114-2023

Re: Clariant Corporation., Docket No. TSCA-01-2007-0058

Dear Ms. Rivera:

Please file the enclosed Consent Agreement and Final Order in Docket No. TSCA-01-2007-0058. I also enclose a copy.

I certify that this day I have served a copy of the Consent Agreement and Final Order on Clariant Corporation, by first class mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Olivier", is written over the typed name.

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Erin Russell, Clariant Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)	Docket No. TSCA-01-2007-0058
)	
CLARIANT CORPORATION)	
)	<u>CONSENT AGREEMENT</u>
Respondent)	<u>AND FINAL ORDER</u>
)	
)	
)	

The United States Environmental Protection Agency, Region I ("EPA") issues this Consent Agreement and Final Order to assess penalties for violations of Section 6(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2605(e), involving the manufacture, distribution in commerce, and export of polychlorinated biphenyls ("PCBs").

CONSENT AGREEMENT

The EPA issued Clariant Corporation a Complaint and Notice of Opportunity for Hearing in February 2007. The EPA and Respondent Clariant Corporation ("Clariant" or "Respondent") agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter.

Therefore before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

A. Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to \$ 27,500 for each day of violation of TSCA after January 30, 1997, and before March 15, 2004.

B. The provisions of this Consent Agreement and Final Order shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

C. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent neither admits nor denies the specific allegations of the Complaint, and consents to the terms of this Consent Agreement and Final Order.

D. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint. Respondent hereby waives any right to appeal the Final Order accompanying this Consent Agreement.

II. TERMS OF SETTLEMENT

A. Clariant has conducted an evaluation of the risks associated with the use of products that were inadvertently manufactured and sold using PCB-contaminated pigments. The risk evaluation supports the conclusion that there is no unacceptable risk to end users of the products examined, and that product recalls are not necessary to protect human health or the environment.

Clariant Corporation represents that it is manufacturing pigments and distributing pigments in commerce in accordance with the PCB regulations at 40 C.F.R. §761.20.

B. After discovery of the pigment with elevated levels of PCBs, Clariant took steps to mitigate the problem. When possible, Clariant recovered pigment and products for proper disposal. All remaining Clariant inventories were sent to an appropriate disposal facility.

C. Clariant voluntarily disclosed the violations described in the Complaint to EPA. In light of the above, and taking into account such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in the Complaint in the amount of \$ 211,200.

D. Respondent shall pay the penalty of \$ 211,200 within 30 days of the date this Consent Agreement and Final Order is signed by the Regional Judicial Officer.

E. Respondent shall make payment by submitting a check, to the order of the "Treasurer, United States of America," in the required amount to:

EPA -- Region I
P.O. Box 360197M
Pittsburgh, PA 15251

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall provide copies of the check and letter to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region I
Suite 1100, Mail Code RCH
One Congress Street
Boston, MA 02114-2023

and to Thomas T. Olivier
 Senior Enforcement Counsel
 U.S. Environmental Protection
 Agency, Region I
 Suite 1100, Mail Code SEL
 One Congress Street
 Boston, MA 02114-2023

F. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and to assess a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within 30 calendar days of the entry of the Consent Agreement and Final Order. Interest will be assessed in accordance with 31 C.F.R. § 901.9(b). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

G. The civil penalty under paragraph II.C above, and any interest, non-payment penalties and charges as described in paragraph II.F above, shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

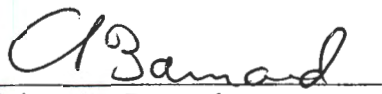
H. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in the Complaint. Compliance with this Consent Agreement and Final Order shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA,

and it is the responsibility of Respondent to comply with said laws and regulations. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

I. The parties shall bear their own costs and fees in this action.

J. Each undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:

 Date: March 13, 2007
Christopher Barnard
Senior Vice President, Legal Secretary & General Counsel
Clariant Corporation

For Complainant:

Deborah Brown
Deborah Brown
Manager, Enforcement Unit
Office of Environmental Stewardship
U.S. Environmental Protection
Agency, Region I

Date: 3/26/07

Thomas T. Olivier
Thomas T. Olivier
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region I

Date: 3/26/07

III. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region I

Date: 3/28/07

Region 1 Seeks Penalties for Manufacture of PCBs

Region 1 has filed an administrative complaint against Clariant Corporation seeking penalties for the manufacture and distribution in commerce of PCBs in pigments. The complaint seeks up to \$ 27,500 per day of violation of TSCA and the PCB regulations.

In September 2003, Clariant notified EPA that it had discovered inadvertently-manufactured PCBs at levels over 50 ppm in two red pigment products. The products had been manufactured, distributed in commerce to customers, and used in the manufacture of consumer products from early 2002 to September 2003. In all, Clariant produced 67 batches of pigments at levels over 50 ppm in 2002 and 2003, and made 129 shipments of pigments to customers.

After notifying EPA of the high PCB levels in its pigments, Clariant recalled unused pigments from its customers and agreed to undertake a risk assessment of consumer products containing its contaminated pigments. The risk assessment analyzed the risks presented by carpets and plastic food wrap that used the red pigments in question (these were deemed the products with the highest potential for human exposure). The purpose of the risk assessment was to evaluate whether product recalls were necessary. The recently-concluded analysis has been reviewed and approved by EPA, and finds that there is no unreasonable risk for end users. Accordingly, product recalls appear unnecessary.

Contacts: Marianne Milette, (617) 918 1854; Tom Olivier, (617) 918 1737.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEB 16 2006

Christopher Barnard, Senior Vice President
Clariant Corporation
4000 Monroe Road
Charlotte NC 28205

Re: Docket No. TSCA-01-2007-0058

Dear Mr. Barnard:

Enclosed is a Complaint seeking penalties for violations of federal PCB regulations under Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), arising from the manufacture and distribution in commerce of PCBs at your company's Coventry, Rhode Island, facility.

Please read the Complaint and the enclosed rules of practice carefully to find the options available to you in responding to this action. Whether or not you choose to request a hearing, you may wish to request an informal conference to discuss the matter with EPA representatives. Please note that failure to provide a written answer to this Complaint within 30 days of receipt could result in the issuance of a default order.

In the alternative, to save both you and EPA the burden of protracted negotiations and litigation, a reduction in the proposed penalty will be applied to the settlement of this matter if you choose to sign the enclosed Consent Agreement and return it to EPA within 30 days of receipt of this letter. If you choose not to sign the Consent Agreement within the specified time period, the offer will be withdrawn and will not be reinstated except in limited and unusual circumstances.

Please note that 40 C.F.R. § 22.08 prohibits the unilateral discussion of the merits of this action with the Regional Administrator or an Administrative Law Judge.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

It is the practice of this office to inform the press of the issuance of administrative complaints and consent agreements.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Deborah", followed by a horizontal flourish.

Deborah Brown
Manager, Enforcement Office
Office of Environmental Stewardship
EPA Region II

cc: Erin Russell, Assistant General Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)	Docket No. TSCA-01-2007-0058
)	
CLARIANT CORPORATION)	
)	<u>CONSENT AGREEMENT</u>
)	<u>AND FINAL ORDER</u>
Respondent)	
)	
_____)	

The United States Environmental Protection Agency, Region I ("EPA") issues this Consent Agreement and Final Order to assesses penalties for violations of Section 6(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2605(e), involving the manufacture, distribution in commerce, and export of polychlorinated biphenyls ("PCBs").

CONSENT AGREEMENT

The EPA issued Clariant Corporation a Complaint and Notice of Opportunity for Hearing in February 2007. The EPA and Respondent Clariant Corporation ("Clariant" or "Respondent") agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

A. Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to \$ 27,500 for each day of violation of TSCA after January 30, 1997, and before March 15, 2004.

B. The provisions of this Consent Agreement and Final Order shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

C. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent neither admits nor denies the specific allegations of the Complaint, and consents to the terms of this Consent Agreement and Final Order.

D. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint. Respondent hereby waives any right to appeal the Final Order accompanying this Consent Agreement.

II. TERMS OF SETTLEMENT

A. Clariant has conducted an evaluation of the risks associated with the use of products that were inadvertently manufactured and sold using PCB-contaminated pigments. The risk evaluation supports the conclusion that there is no unacceptable risk to end users of the products examined, and that product recalls are not necessary to protect human health or the environment.

Clariant Corporation represents that it is manufacturing pigments and distributing pigments in commerce in accordance with the PCB regulations at 40 C.F.R. §761.20.

B. Clariant voluntarily disclosed the violations described in the Complaint to EPA. In light of the above, and taking into account such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in the Complaint in the amount of \$ 211,200.

C. Respondent shall pay the penalty of \$ 211,200 within 30 days of the date this Consent Agreement and Final Order is signed by the Regional Judicial Officer.

D. Respondent shall make payment by submitting a check, to the order of the "Treasurer, United States of America," in the required amount to:

EPA -- Region I
P.O. Box 360197M
Pittsburgh, PA 15251

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall provide copies of the check and letter to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region I
Suite 1100, Mail Code RCH
One Congress Street
Boston, MA 02114-2023

and to Thomas T. Olivier
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region I
Suite 1100, Mail Code SEL
One Congress Street
Boston, MA 02114-2023

E. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and to assess a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within 30 calendar days of the entry of the Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 4 C.F.R. § 102.13(e).

F. The civil penalty under paragraph II.B above, and any interest, non-payment penalties and charges as described in paragraph II.E above, shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

G. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in the Complaint. Compliance with this Consent Agreement and Final Order shall not be a defense to any other

actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

H. The parties shall bear their own costs and fees in this action.

I. Each undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:

Christopher Barnard
Senior Vice President, Legal Secretary & General Counsel
Clariant Corporation

Date: _____

For Complainant:

Deborah Brown
Manager, Enforcement Unit
Office of Environmental Stewardship
U.S. Environmental Protection
Agency, Region I

Date: _____

Thomas T. Olivier
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region I

Date: _____

III. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region I

Date: _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

February 16, 2007

Wanda Rivera, Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region I
Suite 1100, Mail Code RCH
One Congress Street
Boston, Massachusetts 02114-2023

Re: Clariant Corporation, Docket No. TSCA-01-2007-0058

Dear Ms. Rivera:

Please file the enclosed original Complaint and Notice of Opportunity for Hearing in Docket No. TSCA-01-2007-0058. I also enclose a copy of the Complaint.

I certify that this day I have served a copy of the Complaint and Notice of Opportunity for Hearing, with a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 and a copy of the PCB Penalty Policy, by certified mail, return receipt requested, on Christopher Barnard, Senior Vice President of Clariant Corporation.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Olivier".

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Christopher Barnard, Senior VP, Clariant.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In re:)	
)	
Clariant Corporation,)	Docket No. TSCA-01-2007-0058
)	
Respondent)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
)	

COMPLAINT

The United States Environmental Protection Agency, Region 1 ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), to Clariant Corporation. The Complaint notifies Clariant Corporation ("Clariant" or "Respondent") that EPA intends to assess penalties for violations of Section 15 of TSCA and of EPA's regulations at 40 C.F.R. Part 761. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

STATUTORY AND REGULATORY BASIS

(1) Section 16(a) of TSCA provides for the assessment of penalties for violations of Section 15 of TSCA. Section 15(1)(C), in turn, states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA.

(2) The regulations entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions," 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA.

(3) Forty C.F.R. §761.20(b) provides that no person may manufacture PCBs for use in the

United States or manufacture PCBs for export from the United States without an exemption, except that PCBs manufactured in an excluded manufacturing process do not require an exemption.

(4) Forty C.F.R. §761.20(c) provides (in relevant part) that no person may process or distribute in commerce any PCB for use within the United States or for export from the United States without an exemption, except PCBs manufactured in an excluded manufacturing process, or PCBs that meet one of the exceptions of 40 C.F.R. §§761.20(c)(1)-(5).

GENERAL ALLEGATIONS

(5) Respondent is a corporation with its principal place of business in Charlotte, North Carolina.

(6) Respondent is a "person" as defined at 40 C.F.R. § 761.3.

(7) Respondent owns and operates a facility in Coventry, Rhode Island (the "Facility").

(8) At Respondent's Facility, Respondent manufactures, processes, and ships industrial dyes and chemicals.

COUNT I

(9) During the years 2002 and 2003, Clariant manufactured batches of red pigments that contained PCBs at levels over 50 ppm. The red pigments were intended for use in the United States or for export.

(10) Clariant did not have an exemption to manufacture PCBs in batches of pigments.

(11) The PCBs in batches of pigments were not manufactured in an excluded manufacturing process as defined at 40 C.F.R. §761.3.

(12) In 2002 Clariant manufactured approximately 28 batches of red pigments containing

PCBs at over 50 ppm. The PCB levels in these batches ranged from 52 ppm to 2034 ppm, and averaged 504 ppm.

(13) In 2003, Clariant manufactured approximately 39 batches of red pigments containing PCBs at over 50 ppm. The PCB levels in these batches ranged from 53 ppm to 1061 ppm, and averaged 358 ppm.

(14) Prior to manufacturing the batches of pigments referenced above, Clariant had generally employed procedures to monitor and keep levels of manufactured PCBs below 50 ppm. However, it did not detect the elevated levels in the batches referenced above until July 8, 2003.

(15) After July 8, 2003, Clariant manufactured various batches of red pigments with PCB levels over 50 ppm, up to and including September 3, 2003.

COUNT II

(16) During the years 2002 and 2003, Clariant distributed in commerce red pigments containing PCBs at over 50 ppm. The red pigments were intended for use in the United States or for export.

(17) Clariant did not have an exemption to distribute PCBs in commerce.

(18) The PCBs Clariant shipped in batches of pigments were not manufactured in an excluded manufacturing process as defined at 40 C.F.R. §761.3, and did not meet any of the exceptions of 40 C.F.R. §§761.20(c)(1)-(5).

(19) The PCBs that Clariant distributed in commerce were supplied to customers for use in various products requiring red dye or pigment.

(20) In 2002, Clariant shipped red pigment products with PCB levels over 50 ppm in approximately 43 shipments.

(21) In 2003, Clariant shipped red pigment products with PCB levels over 50 ppm in approximately 86 shipments.

(22) Approximately 21 of the above shipments of red pigments were exported to Mexico.

(23) Approximately 108 of the above shipments were sent to customers in the United States. These customers used the red pigments in various products sold and used in the United States.

(24) The products that contained Clariant's PCB-contaminated pigments included carpets, plastic food packaging, and hot tubs.

(25) The size of the red pigment shipments containing PCBs at over 50 ppm ranged from 1 pound to over 3,500 pounds.

(26) Clariant shipped approximately 17 shipments of red pigments containing PCBs at over 50 ppm after July 8, 2003, the date on which it detected levels of PCBs above 50 ppm in red pigment batches.

FINDINGS

(27) Accordingly, on numerous days of manufacture, distribution in commerce, and export of PCBs over 50 ppm, Respondent violated Section 6(e) of TSCA and 40 C.F.R. §§761.20(b) and (c).

PROPOSED CIVIL PENALTY

Section 16(a) of TSCA, together with the Civil Monetary Penalty Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$27,500 per day for each violation. Based on the allegations above, and taking into account the penalty assessment criteria of Section 16(a) of TSCA, EPA proposes to assess a civil penalty

of up to \$ 27,500 per day for each violation.

The penalty assessment criteria of Section 16(a)(2)(B) include the nature, circumstances, extent and gravity of these violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue to do business, any history of prior such violations, its degree of culpability, and such other matters as justice may require. To apply these criteria, where applicable, EPA will apply the procedures and criteria described in the "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990, a copy of which is included with this Complaint. See EPA's "Notice of Availability of Polychlorinated Biphenyls Penalty Policy," 55 Fed. Reg. 13955 (April 13, 1990).

As described above in Count I, Clariant manufactured 67 batches of pigment with PCB levels above 50 ppm. This unauthorized manufacture of PCBs presented risks of exposure to people who processed and shipped the material.

As described above in Count II, on approximately 129 occasions Clariant distributed PCBs in commerce by shipping pigments to customers for use in manufacturing consumer products. The distribution and use of PCBs in consumer products at levels over 50 ppm presented risks of exposure to people exposed to the material during manufacturing, and to consumers who bought and used the products in question.

NOTICE OF OPPORTUNITY FOR A HEARING

As provided by Section 16(a) of TSCA, Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law,

Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (RCH)
U.S. Environmental Protection Agency
Region I
Suite 1100, Mail Code RCH
1 Congress Street
Boston, Massachusetts 02114-2023


Proceedings will be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). See 40 C.F.R. § 22.15 for the required contents of an Answer.

If Respondent fails to file an Answer with the Regional Hearing Clerk within 30 days of receipt of the Complaint, such failure will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 16 of TSCA. In that event, the proposed penalty would become due and payable by Respondent 60 days after EPA issues a final order finding Respondent in default. Instead of filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty.

SETTLEMENT CONFERENCE

Respondent's attorney is encouraged to contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737, to arrange for a settlement conference or to discuss the legal matters relating to this Complaint.

Please note that a request for an informal settlement conference does not enlarge the 30-day period for filing a written Answer.


Deborah Brown, Manager
Enforcement Office, Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

Date: 2/15/07